IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 344 OF 2005

CAETANO R.CARDOZO THROUGH HIS POWER OF ATTORNEY AND ANR., ...Petitioners

Versus

APULI A.PARVATKAR AND 2 ORS., ...Respondents

Mrs.A.Agni, Advocate for the Petitioners.
Mr. E. Dias, Advocate For R. 1, 2 and 3.

Coram:- D. D. SINHA, J.

Date:- 18th November, 2005

P.C.:

Heard Mrs. A. Agni, the learned counsel for the Petitioners and Mr. E. Dias, the learned counsel for the respondents.

2. The Writ Petition is directed against the Order dated 28.7.05 passed by the Civil Judge S.D. whereby the evidence of the plaintiffs was closed. The learned counsel for the petitioners submitted that though the petitioners/plaintiffs have not given the list of witnesses, however the plaintiffs are not prohibited from examining the witness/witnesses whose names are not given in the list of witnesses by the plaintiffs under Order 16, rule 1 C.P.C. It is contended that in the instant case though the petitioners had not given the names of the witnesses to be examined by the plaintiffs in the list of witnesses, however the plaintiffs were permitted to examine one witness. When the matter was listed on 28.07.05 the plaintiffs wanted to examine one additional witness on the next date and therefore the trial Court ought to have given one chance to the plaintiffs to examine their witness on affidavit in view of sub-rule (3) of Rule 1 of Order 16. The learned counsel for the petitioners contended that the trial Court erred in not granting a chance to the plaintiffs to examine one

witness and further was not justified in closing the evidence of the plaintiffs and permitting the defendants to file affidavit in evidence on the next date.

3. The learned counsel for the respondents on the other hand, supported the impugned order.

4. I have considered the contentions canvassed by the respective counsel. It is no doubt true that even if the names of the witnesses is not given in the list of witnesses, the plaintiffs are entitled to examine the witness in view of Rule 1A. However, in the instant case on 28.07.05 the matter was taken on priority and one of the witnesses of the plaintiffs was also examined. However, since the plaintiffs have not furnished the names of the witnesses to be examined on behalf of the plaintiffs in the list of witnesses nor any application was made to the Court on that day to permit the plaintiffs to examine one additional witness in view of sub-rule (3) nor the affidavit of the additional witness in the form of evidence was ready with the plaintiffs on 28.07.05, therefore the conclusion arrived at by the Court that the plaintiffs' evidence is closed in the light of the above referred facts, in my view cannot be said to be unfounded or without any basis.

5. In the instant case when the plaintiffs have not given the name of the witness in the list of witnesses, it was necessary for the plaintiffs at least to keep the additional witness ready on that day or at least ought to have moved a specific application in this regard before the Court. However, the plaintiffs did not do any of these things and in the absence thereof the impugned order is just and proper and does not require any interference at the hands of this Court.

Writ Petition is dismissed.

D. D. SINHA, J.

sl.